IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

FIRST APPEAL No. 4553 of 2006

For Approval and Signature:

HONOURABLE MR.JUSTICE M.R. SHAH

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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ANJAR MUNICIPALITY - Appellant(s)
Versus
DEVABHAI BHACHUBHAI HARIJAN & 4 - Defendant(s)

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Appearance :

MR YS MANKAD for Appellant(s) : 1,
MR MEHUL S SHAH for Defendant(s) : 1,
MR SURESH M SHAH for Defendant(s) : 1,
None for Defendant(s) : 2 - 5.

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CORAM : HONOURABLE MR.JUSTICE M.R. SHAH

Date : 17/04/2007

ORAL JUDGMENT

Present Appeal has been filed by the appellant, Anjar Municipality challenging the

judgment and order dated 1.10.2005 passed by the Commissioner of Workmen's Compensation, Kutch-Bhuj under the provisions of the Workmen's Compensation Act, 1923, in Workmen's Compensation Case No. 61 of 1996 by which the learned Commissioner directed the appellant herein to pay/deposit an amount of Rs. 80,640 along with 12% interest from the date of accident and penalty at 50%. Along with the Appeal Memo the appellant has produced a receipt with regard to deposit of the amount. Shri Mehul Shah, learned advocate appearing on behalf of the respondents, original-claimants has raised preliminary objection that the present appeal cannot be entertained considering the provisions of Section 30 of the Workmen's Compensation Act as the appellant has not deposited the entire awarded amount and the certificate to that effect has not been produced. Shri Mankad, learned advocate appearing on behalf of the appellant is not in position to satisfy this Court whether the entire awarded amount by the learned Commissioner has been deposited with the Commissioner before

filing the present appeal. It is not in dispute that the certificate which has been annexed and produced by the appellant is for deposit of Rs. 80,640 only. Thus, the entire awarded amount has not been deposited by the appellant which is a precondition as per Proviso to sub-section (1) of Section 30 of the Workmen's Compensation Act. Considering the judgment of the Division Bench of this Court in the case of ***Haji Aliyas Yakub Vs. Ayasabai Ismail,*** reported in ***1977 ACJ (Gujarat) 355,*** as well as the decision of the Division Bench of this Court in the case of ***State of Gujarat V. Shantaben Balubhai Patel & Others,*** reported in **(1994) 1 GLR Page 150** as the entire awarded amount has not been deposited the present appeal is not required to be entertained. Accordingly this appeal is dismissed as not entertainable. However, it is observed that it will always be open for the appellant to prefer appeal after deposit of entire awarded amount and produce receipt of such awarded amount as provided under Proviso to sub-section (1) of Section 30 of the Act. Hence, this Appeal is

dismissed as not entertainable. No costs.

2. In view of First Appeal not being entertained, no order on Civil Application No. 13198 of 2006.

[M.R. Shah, J.]

rmr.